



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the landlords - MND, MNSD, MNDC, FF

For the tenant – MNSD, MNDC, FF

Introduction

This hearing was convened by way of conference call in response to both parties' applications for Dispute Resolution. The landlords applied for a Monetary Order for damage to the unit, site or property; for an Order permitting the landlord to keep all or part of the tenants security and pet deposit; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the tenant for the cost of this application. The tenant applied for a Monetary Order to recover double the security and pet deposits; for a Monetary Order for money owed or compensation for damage or loss under the *Act*, regulations or tenancy agreement; and to recover the filing fee from the landlord for the cost of this application.

At the outset of the hearing the landlords withdrew their application for a Monetary Order for money owed or compensation for damage or loss under the *Act*, regulations or tenancy agreement and reduced their claim from \$5,332.28 to \$332.28.

The tenant and landlords attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlords and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The parties confirmed receipt of evidence. I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Are the landlords entitled to a Monetary Order for damage to the unit, site or property?
- Are the landlords permitted to keep all or part of the security or pet deposit?
- Is the tenant entitled to a Monetary Order to recover double the security or pet deposit?
- Is the tenant entitled to a Monetary Order for money owed or compensation for damage or loss?

Background and Evidence

The parties agreed that this fixed term tenancy started on May 01, 2015 and was due to end on May 31, 2016. The tenancy ended on February 19, 2016 and the unit was re-rented to another tenant. The tenancy agreement states that rent for this unit was \$1,200.00 per month due on the first of each month, the landlord testified that he had an arrangement with the tenant to pay rent on the last day of each month. The tenant paid a security deposit of \$600.00 on April 23, 2015 and a pet deposit of \$600.00 on May 07, 2015.

The landlords' application

The landlord LL testified that during the move out inspection the tenant agreed in writing that the landlords could deduct the following costs from the security deposit:

Cleaning - \$12.00

Waxing - \$22.00

Painting - \$15.00

Light Bulb - \$1.00

Tile cleaning - \$40.00

Carpet cleaning – \$99.75

Changing locks and keys - \$113.72

Window screen - \$27.73

The total amount the tenant agreed the landlords could deduct was \$309.20. LL testified that the cost to change the locks and keys came in slightly higher at \$136.80. Therefore, the landlords also seek an Order to be permitted to keep the additional amount for this work of \$23.28. The landlords also seek to recover their filing fee of \$100.00.

The tenant testified that she did agree in writing that the landlord could deduct \$309.20 from the security deposit; however, this was only agreed to because there was nowhere on the move out inspection form that the tenant could sign to disagree with the condition of the rental unit. The tenant disputed the additional amount charged for changing the locks and keys. The tenant testified that at the start of the tenancy she had asked the landlords for a second key to the unit but the landlords did not provide one so the tenant had a second key cut. The tenant testified that while she was out of town she lost the key in the parking lot so at the end of the tenancy she only returned one key to the landlords.

LL testified that the original key had a 'do not copy' on it but the tenant copied it anyways. The tenant informed LL that she had lost the key in a snow bank. As the tenant had copied the key and did not return both copies LL testified that for the safety of the new tenants the landlords had to have the locks and keys changed.

The tenant's application

The tenant testified that as the landlords have not returned the security or pet deposit and they received the tenant's forwarding address in writing on February 14, 2016 the tenant seeks to recover double the security and pet deposit to an amount of \$2,400.00. The tenant testified that she believes the *Act* entitles her to two inspection dates and she only got one on February 14, 2016. The tenant believes she was coming back to do a final inspection on February 19, 2016 but they all met at the landlords' office instead and that is when LL disclosed about the torn screen being found. At that meeting the

tenant signed the security deposit document agreeing the landlord could keep \$302.20 from the security deposit.

The landlord testified that the condition of the rental unit is documented on the move out inspection form and then the exceptions including any damages the tenant is responsible for are documented on another form which the tenant can sign or not sign if she does not agree with them. The tenant did sign and date this form and therefore agreed that she is responsible for these damages.

The tenant testified that she had to take time off work to deal with her application and gather and send evidence. This resulted in lost wages which the tenant seeks to recover from the landlord to an amount of \$800.00.

The tenant testified that due to an accidental flood occurring in the unit she was unable to live in the unit for the month of November. The tenant testified that the washer drains into the laundry room sink and a cleaning rag inadvertently fell into the sink and blocked it. This caused the flood and the tenant's insurance company paid the landlord back his \$5,000.00 deductible he had to pay to his insurance company. The tenant testified that her insurance company paid this but wrote that they made the payment without prejudice and did not admit the tenant was liable. The tenant could not reside in the unit while the repair work was completed so the tenant seeks to recover the rent paid from November 01, 2015 to December 01, 2015 of \$1,200.00.

The tenant referred to her phone logs provided in documentary evidence showing that she called the restoration company on October 05 and called the landlord's number which she had always used to contact him on, on October 06, 2015.

The landlord testified that this flood occurred through the tenant's negligence. Furthermore, the tenant did not follow the procedures in the event of an emergency by calling the landlord or contacting one of the landlords emergency designated persons which were provided to the tenant in June 2015. The incident occurred on October 05,

2015 and the tenant did not contact the landlord until October 06, 2015 and left a number on the landlords' office phone instead of the landlord's phone number provided to the tenant on the tenancy agreement. This is partially why the tenant's insurance company admitted liability on behalf of the tenant and reimbursed the landlord the \$5,000.00 paid out.

The landlord testified that the tenant contacted a restoration company who came in and did some work. The most the tenant would have been inconvenienced would have been three days while the bathroom lino was replaced.

The tenant asked the landlord what was his understanding of the tenant's insurance company's letter. The landlord responded that the tenant's insurance company paid out but the tenant did not admit liability. The tenant testified that she did not have the landlord's list of designated persons to call available to her at the time.

The landlord asked the tenant why she called the restoration company before she called the landlord. The tenant responded that she had mopped up the water and knew it would require fans to dry it out so she called the restoration company in order to mitigate any loss.

Analysis

After careful consideration of the testimony and documentary evidence before me and on a balance of probabilities I find as follows:

With regard to the landlords' application to keep part of the security deposit; when a tenant gives the landlord written permission to keep all or part of a security or pet deposit then the landlord is entitled to do so without filing a claim to keep it.

Consequently as I am satisfied that the tenant did agree in writing that the landlords could retain the amount of \$309.20 from the security deposit then I am not required to make a decision on that matter. The tenant cannot later retract this agreement.

Consequently, the landlords are entitled to retain the amount of **\$309.20** from the security deposit for the agreed upon damages and cleaning required to the rental unit.

The landlords also seek to recover an additional amount that was not agreed upon by the tenant for changing locks and keys. The tenant argued that the key was lost and therefore she returned the key she had. The landlord argued that as the tenant cut a second key without the landlords' permission and does not know where she lost the key they had to change the locks and incurred a higher amount than originally estimated.

I am satisfied from the evidence before me that the tenant did agree to pay the amount of \$113.72 for the changing of locks and keys. While the tenant now disputes that this cost is her responsibility; as the tenant did lose a key, then the landlord is entitled to protect the rights of future tenants by having the locks changed. Further to this the tenant argued that there was nowhere on the move out inspection form that the tenant could sign to disagree with the findings of the report. I am satisfied that the landlords' report has a separate page that the tenant can sign to agree with the repairs to be made or not sign it if she disagreed. While the regulations do specify that the contents of the report must have a section included for tenants to agree or disagree that the report fairly represents the condition of the rental unit, by signing this section of the report I am satisfied that the tenant agreed at the time to the costs estimated for repairs. I therefore find the cost of the locks was slightly higher than estimated and the landlords are therefore entitled to retain the additional amount of **\$23.08** from the security deposit.

I do caution the landlords to ensure that they fully comply with s. 23(J) and s. 23(k) of the Residential Tenancy Regulations when completing a move in or move out inspection report or to download copies of these reports from the Residential Tenancy website to avoid any issues in the future.

With regard to the tenants' application to recover double the security and pet deposit; I refer the parties to s.38 of the *Act* that states that, if the landlord does not either return the security or pet deposit or apply for dispute resolution within 15 days after the later of

the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing, the landlord must pay the tenant double the amount of security and pet deposit.

This tenancy ended on February 19, 2016 and the landlord had a forwarding address in writing on February 14, 2016. The tenant argued that under the *Act* she is entitled to two move out inspections. The *Act* actually states that the landlord must provide the tenant with two opportunities to attend a move out inspection not two separate inspections. If the parties agreed to do the inspection on February 14, 2016 and I can see from the evidence provided that both parties did attend on that date then a second opportunity is not required to be given by the landlords. The landlords filed their application to keep the security deposit on February 26, 2016. Therefore as the landlords did file within 15 days after the tenancy ended and the tenant has not shown that the landlords' right to file an application has been extinguished; then the tenant's application to recover double the security and pet deposit is limited to the balance of the deposits after the landlords' claim has been satisfied.

Security and pet deposits	\$1,200.00
Less amount agreed upon by the tenant	(-\$309.20)
Less the amount awarded to the landlord	(-\$23.08)
Balance of security and pet deposits	\$867.72

With regard to the tenant's application to recover lost wages of \$800.00; there is no provision under the *Act* to award a party costs incurred to file an application, to serve another party or to gather evidence. Consequently, this section of the tenant's claim is dismissed.

With regard to the tenant's application to recover rent paid for November, 2015 of \$1,200.00; the tenant argued that as this flood occurred accidentally then she cannot be held libel and as she could not live in the rental unit for the month of November she

should be entitled to recover the rent paid to the landlord. The landlords argued that it was the tenant's negligence that caused the flood and therefore she should not be entitled to recover rent paid for November particularly when the evidence shows she only had the loss of use of the bathroom for three days.

I have considered both arguments in this matter. It is clear from the evidence presented that this flood occurred when a cleaning rag fell into the sink and blocked the sink when the washer was draining into it. While I concede that this may have been accidental the fact remains that it was not caused through any negligence on the part of the landlord. While the tenant's insurance company did pay the landlords' deductible of \$5,000.00 if the tenant also sought to be reimbursed any amount for having to live somewhere else for the duration of the repairs then the tenant should have sought this through her insurance company. The tenant's application to recover November's rent from the landlord is therefore dismissed as the tenant has not shown that the landlords acted in a negligent manner.

As the landlords' application has merit and the tenant's application has little merit then I award the landlords the recovery of their filing fee of **\$100.00** and permit the landlords to deduct this from the security deposit. The tenant must bear the cost of her own filing fee.

Conclusion

The landlords' application is allowed. The landlords may deduct **\$432.28** from the security deposit.

The tenant's application is partially successful. A copy of the tenant's decision will be accompanied by a Monetary Order for **\$767.72** pursuant to s. 67 of the Act. The Order must be served on the landlords. Should the landlords fail to comply with the Order the Order may be enforced through the Provincial (Small Claims) Court of British Columbia as an Order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: October 17, 2016

Residential Tenancy Branch

